BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved On: 15.12.2021
Date of Decision : 21.03.2022

Misc. Application No. 201 of 2020
And
Appeal No. 214 of 2020

Nithish Bangera
C/304, Aishwarya Enclave
Yashwantrao Tawde Marg,
Near Dahisar Bridge,
Dahisar (W),
Mumbai- 400 068 …Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai- 400 051 …Respondent

Mr. Nithish Bangera, PCS for the Appellant.

Mr. Shyam Mehta, Senior Advocate with Mr. Mihir Mody, Mr. Arnav Misra and Mr. Mayur Jaisingh, Advocates i/b K. Ashar & Co. for the Respondent.

WITH
Appeal No. 286 of 2020

Sanjay Aggarwal
D-901, Usha Nagar,
Bhandup
Mumbai- 400 078 …Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai- 400 051 …Respondent

Ms. Aishwarya Shubhangi, Advocate i/b Triad Law Chambers for the Appellant.

Mr. Shyam Mehta, Senior Advocate with Mr. Mihir Mody, Mr. Arnav Misra and Mr. Mayur Jaisingh, Advocates i/b K. Ashar & Co. for the Respondent.

WITH
Appeal No. 351 of 2020

European American Investment Bank AG
Schottenring 18,
1010 Vienna, Austria …Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai- 400 051 …Respondent

Mr. Dharam Jumani, Advocate with Mr. Jenil Shah, Advocate i/b Ganesh and Co. and Mr. Shoryendu Ray, Advocate i/b Wadhwa Law Office for the Appellant.

Mr. Shyam Mehta, Senior Advocate with Mr. Mihir Mody, Mr. Arnav Misra and Mr. Mayur Jaisingh, Advocates i/b K. Ashar & Co. for the Respondent.

WITH
Appeal No. 527 of 2021

Farmax India Limited
Survey No. 658,
Bowrampet Village,
Qutubullapur Mandal,
(Sub-Urban of Hyderabad),
Ranga Reddy, Hyderabad- 500 043 …Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai- 400 051 …Respondent

Mr. M.J. Bhatt, Advocate for the Appellant.

Mr. Shyam Mehta, Senior Advocate with Mr. Mihir Mody, Mr. Arnav Misra and Mr. Mayur Jaisingh, Advocates i/b K. Ashar & Co. for the Respondent.

WITH
Appeal No. 528 of 2021

Mr. M. Srinivasa Reddy, M.D.
Farmax India Ltd.,
MIG 397, KPHB Colony,
Kukatpally,
Hyderabad- 500 072 …Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai- 400 051 …Respondent

Mr. M.J. Bhatt, Advocate for the Appellant.

Mr. Shyam Mehta, Senior Advocate with Mr. Mihir Mody, Mr. Arnav Misra and Mr. Mayur Jaisingh, Advocates i/b K. Ashar & Co. for the Respondent.

AND
Appeal No. 632 of 2021

1. Prospect Capital Ltd.
   23 Berkeley Square
   London WIJ6HE

2. John Behar
   Chief Executive- Prospect Capital Ltd.
   23 Berkeley Square
   London WIJ6HE …Appellants

Versus

1. Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai- 400 051

2. Farmax India Limited
Survey No. 658,
Bowrampet Village,
Qutubullapur Mandal,
(Sub-Urban of Hyderabad),
Ranga Reddy, Hyderabad- 500 043

3. Mr. M. Srinivasa Reddy
MIG 397, KPHB Colony,
Kukatpally,
Hyderabad- 500 072

4. Arun Pachariya
J-04, Emirates Hills
Jhulnar Street-2,
Emirates Hills, Dubai,
United Arab Emirates

5. Vintage FZE
J-04, Emirates Hills
Jhulnar Street-2,
Emirates Hills, Dubai,
United Arab Emirates

6. Mr. Sanjay Aggarwal
D-901, Usha Nagar,
Bhandup,
Mumbai- 400 078

7. Mr. Mukesh Chauradiya
02 Adinath Nagar,
Opp. Rita Park Society
Girdharnagar Shalibaug
Ahmedabad- 380 004

8. Mr. Nithish Bangera
C/304, Aishwarya Enclave
Yashwantrao Tawade Marg,
Near Dahisar Bridge,
Dahisar (W),
Mumbai- 400 068

9. India Focus Cardinal Fund
C/o Cardinal Capital Partners,
Suite No. 501, St. James Court,
St. Dennis Street,
Port Louis,
Mauritius

10. Highblue Sky Emerging Market Fund
C/o Aurisse International Ltd,
2nd Floor, Wing A Cyber Tower,
Ebene Cyber City,
72201, Ebene, Mauritius

11. European American Investment Bank AG
Palais Esterhazy
Wallnerstrassee 4,
1010 Vienna, Austria

12. Cardinal Capital Partners
Suite 501, St. James Court
St. Dennis Street,
Port Louis, Mauritius …Respondents

Ms. Ranjana Roy Gawai, Advocate with Ms. Prachi Golechha, Advocate i/b RRG & Associates for the Appellant.

Mr. Shyam Mehta, Senior Advocate with Mr. Mihir Mody, Mr. Arnav Misra and Mr. Mayur Jaisingh, Advocates i/b K. Ashar & Co. for the Respondent.

Order Reserved On: 03.02.2022
Date of Decision : 21.03.2022

Appeal No. 33 of 2022

Farmax India Limited …Appellant
Survey No. 658,
Bowrampet Village,
Qutubullapur Mandal,
(Sub-Urban of Hyderabad),
Ranga Reddy, Hyderabad- 500 043

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai- 400 051 …Respondent

Mr. M. J. Bhatt, Advocate for the Appellant.

Mr. Sumit Rai, Advocate with Mr. Mihir Mody, Mr. Arnav Misra and Mr. Mayur Jaisingh, Advocates i/b. K. Ashar & Co. for Respondent SEBI.

AND
Appeal No. 34 of 2022

Mr. M. Srinivasa Reddy, M.D.
Farmax India Ltd.,
MIG 397, KPHB Colony,
Kukatpally,
Hyderabad- 500 072 …Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai- 400 051 …Respondent

Mr. M. J. Bhatt, Advocate for the Appellant.

Mr. Sumit Rai, Advocate with Mr. Mihir Mody, Mr. Arnav Misra and Mr. Mayur Jaisingh, Advocates i/b. K. Ashar & Co. for Respondent SEBI.

CORAM: Justice Tarun Agarwala, Presiding Officer
Justice M. T. Joshi, Judicial Member

Per: Justice M. T. Joshi, Judicial Member

1. All the present appeals are arising out of the same issue of Global Depository Receipts (hereinafter referred to as "GDRs") by the appellant Farmax India Ltd. (hereinafter referred to as "Farmax") in two tranches on June 29, 2010 and August 14, 2010 in the amount of US$ 71.91 million. According to respondent SEBI, in fact issuing these GDRs and thereafter converting those GDR by way of cancellation into equity shares in the Indian market was nothing but a fraudulent scheme hatched by the present appellants along with other co-noticees i.e. Mr. Arun Panchariya, Vintage FZE (hereinafter referred to as "Vintage), Mr. Mukesh Chauradiya and three other noticees i.e. India Focus Cardinal Fund (hereinafter referred to as "IFCF"), Highblue Sky Emerging Market Fund and Cardinal Capital Partners. These other entities had not filed any appeal against the order passed by the learned Whole Time Member (hereinafter referred to as "WTM") of the Securities and Exchange Board of India (hereinafter referred to as "SEBI") dated July 14, 2020. On the same set of fact, two separate independent orders are passed by the learned Adjudicating Officer ("hereinafter referred to as "AO") of respondent SEBI against appellant Farmax and the appellant Mr. M. Srinivasa Reddy dated October 29, 2020 and November 12, 2020. Under these orders appellant Farmax was directed to pay penalty of

Rs. 12 crore, while the appellant Mr. M. Srinivasa Reddy was directed to pay Rs. 50 lakh. It is alleged that there is a violation of the provisions of Section 12A(a), (b), (c) of the SEBI Act, 1992 (hereinafter referred to as "SEBI Act") read with regulations 3(a), (b),(c),(d) and 4(1), (2)(f), (k), (r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market), Regulations, 2003 (hereinafter referred to as "PFUTP Regulations).

2. The learned WTM directed the appellant Farmax to pursue the measures to bring back the outstanding amount of US$ 72.20 million. The appellant Mr. M. Srinivasa Reddy, Managing Director was also directed to ensure the compliance of this direction. The appellant Farmax was restrained from accessing the securities market and further prohibited from buying, selling or dealing in securities, directly or indirectly, in any manner whatsoever or being associated with the securities market in any manner, whatsoever, for a period of five years from the date of the order. The appellant Mr. M. Srinivasa Reddy was similarly restrained for a period of five years. The appellant Sanjay Aggarwal was restrained in similar manner for a period of two years from accessing the securities market. The appellant Prospect Capital Ltd. and its Chief Executive

appellant John Behar were barred from rendering services in connection with instruments as defined as securities in Section 2(h) of Securities Contracts (Regulations) Act, 1956 in the Indian market or in any way dealing with them, directly or indirectly, for a period of two years. The appellant Nithish Bangera, was restrained from accessing the securities market in any manner for a period of two years. Appellant European American Investment Bank AG (hereinafter referred to as "EURAM Bank") was warned to ensure that all its future dealings in the Indian securities market be done strictly in accordance with law. Different directions were issued to other entities who had not appealed against the directions.

3. As can be seen from the impugned the orders the matter concerns the same modus operandi applied in issue of GDRs by different companies regarding which this Tribunal had already passed many orders wherein similar orders were challenged by the parties therein concerning different companies and different entities.

4. So far as the present episode is concerned, according to respondent SEBI the facts are as under:-

5. On June 29, 2010 and August 14, 2010 the GDRs were issued by appellant Farmax. Immediately after issuing the GDRs the appellant Farmax made corporate announcements to Bombay Stock Exchange Limited ("BSE Limited") that the company had successfully concluded placement of all GDRs. The fact that there was a sole subscriber to the GDR was not disclosed. The facts however revealed that Vintage - the wholly owned entity of Arun Panchariya had solely subscribed to those GDR. For that purpose, Vintage had availed a loan from the appellant EURAM Bank vide a loan agreement dated May 05, 2010. Not only this, in the loan agreement it was agreed that all the GDR would be transferred to the account of appellant Farmax to be opened with the bank. The appellant Farmax had opened the account with EURAM Bank wherein the GDR proceeds were agreed to be deposited. Further, appellant Farmax had executed a pledge agreement with appellant EURAM Bank signed by appellant M. Srinivasa Reddy-Managing Director. Under this agreement appellant Farmax had agreed that the entire proceeds shall be pledged to secure the loan granted by EURAM Bank to Vintage owned by Arun Panchariya. The loan was sanctioned by appellant EURAM Bank to Vintage solely for the purpose of subscribing to the GDR and in turn the GDR proceeds received by the appellant

Farmax was pledged for securing the loan advance to Vintage. Thus GDR issue was managed and structured by Arun Panchariya through loan agreement signed between appellant EURAM Bank and Vintage and pledge agreement signed between EURAM Bank and appellant Farmax. The documents shows that even before issuance of GDR the appellant Farmax had pledged GDR proceeds to secure the rights of appellant EURAM Bank against the loan being advanced to Vintage. In the circumstances, though the appellant Farmax had issued GDR for raising capital for it but the same did not remain at its disposal as the same was kept as collateral with Vintage even prior to the issuance of the same. Thereafter, Vintage repaid part of the loan in installments and equal/ less amount only was thereafter released by the appellant EURAM Bank from the appellant Farmax account to the appellant Farmax India / it's subsidiaries UAE account on the same day. It would thus show that the GDR proceeds were not at the disposal of appellant Farmax. Thus, the transaction effectively was to finance the purchase of its own GDR as the GDR proceeds were deposited as a collateral for the loan extended by EURAM Bank to Vintage. Upon making partial repayment by Vintage to the EURAM Bank as detailed in the order, the funds were transferred in that proportion, to the various entities i.e. overseas

subsidiaries of appellant Farmax. However, this diversion of funds has caused loss to the appellant Farmax to the extent of US$ 15.60 million. The GDRs were thereafter converted into equity shares and sold in the Indian stock market. Cancellation of GDR started from August 09, 2010 and continued till December 04, 2010. Vintage transferred 12,58,000 GDRs to India Focus Cardinal Fund and 3,85,865 GDRs to Clariden Leu AG. The depository to the GDR was the Bank of New York Mellon. Upon sale of equity shares converting the GDRs in Indian market, said bank issued Termination Notice to appellant Farmax on March 16, 2015. Shares worth Rs. 53.48 crore were sold pre and post termination of GDR scheme in Indian securities market. Vintage however had defaulted in making repayment of loan to the extent of US$ 56.60 million. Thus, share sold by two funds i.e. India Focus Cardinal Fund and Highblue Sky Emerging Market Fund were the shares which were issued without proper consideration i.e. even though some of the GDR proceeds were appropriated by EURAM Bank upon default of payment by Vintage to the above extent. The role of each of the entities including the present appellants is detailed in the impugned.

6. All the contesting noticees as well as the appellant denied the allegations or blamed noticee no. 3 Mr. Arun Panchariya for the episode.

7. The learned WTM as well as the AO however did not agree with the defense and therefore the impugned orders came to be passed.

8. We have heard the Mr. Nithish Bangera, PCS, Ms. Aishwarya Shubhang, Mr. Dharam Jumani, Mr. M.J. Bhatt, Ms. Ranjana Roy Gawai, learned counsel for the appellants and Mr. Shyam Mehta, the learned senior counsel and Mr. Sumit Rai, the learned counsel for the respondent.

9. In nutshell the allegations qua each of the noticees is that while appellant Farmax and its Managing Director, appellant Mr. Srinivasa Reddy had raised the amount under the GDR as detailed (supra), they in connivance with other relevant parties like noticee no. 3 Mr. Arun Panchariya, noticee no. 4 Vintage had pledged the GDR proceeds with appellant EURAM bank as a security for the loan advanced to appellant Vintage. Appellant Sanjay Aggarwal and his sole employee, appellant Nithish Bangera, Managing Director and employee respectively of La

Richesse Advisors Private Limited ("hereinafter referred to as "La Richesse") who were the Indian Advisor to appellant Farmax to GDR issues had connection with Mr. Arun Panchariya and with the connivance they helped appellant Farmax in issuing the GDRs. The appellant Prospect Capital Ltd. was the Lead Manager to the said issue of GDR. The appellant no. 2 John Behar in this appeal of Prospect Capital Ltd. is the Chief Executive of the said entity. While appellant Vintage defaulted on part of repayment of loan, appellant EURAM bank released part of the pledged security from the account of appellant Farmax to the extent of US$ 56.57 million. Some of the GDRs subscribed by Vintage were transferred by it to original noticee no. 10 India Focus Cardinal Fund and noticee no. 11 Highblue Sky Emerging Market Fund. These two entities also were connected to noticee Arun Panchariya. They had converted the underlying equity shares and sold them into the Indian securities market. Ultimately, the GDR facility was terminated by bank of New York w.e.f June 16, 2015. After this termination bank of New York sold remaining underlying security i.e. 9,61,00,000 shares of appellant Farmax in Indian market. It is alleged that all rest of the noticees except appellant Farmax and its Managing Director Mr. Srinivasa Reddy were connected to noticee no. 3 Arun Panchariya in one way or the

other and retail investors in the securities market as well as appellant Farmax the Company suffered from the same. This takes to consider the cases of the entities who had filed appeal before us.

Appeals of Farmax India Limited and Mr. M. Srinivasa Reddy, M.D.

10. The appellant Mr. Srinivasa Reddy submitted that he had signed blank documents and handed over them to appellant Sanjay Aggarwal and another noticee no. 6 Mr. Mukesh Chauradiya for the purposes of GDR issue. It was also claimed that his signatures were forged. The learned WTM, therefore, noted that contradictory stands were taken by this appellant. The resolution passed by Farmax dated January 30, 2010 would show that it has authorized the use of the funds in the bank account as a security in connection with loans if any. The learned WTM, therefore, concluded that the proceeds of the GDR could not have been used for security in connection with any loan and in fact there was no loan obtained by Farmax from appellant EURAM Bank and, therefore, the very Board Resolution according to the learned WTM would show that these appellants were very well aware of the transactions to follow. These appellants have submitted that when the funds did not reach appellant Farmax they made efforts to proceed

against appellant EURAM Bank as well as First Information Report ("FIR") was filed concerning the said issue. The learned WTM has observed that the said FIR was filed on October 29, 2013 after taking legal opinion in June 2013 while the entire issue had occurred in the year 2010. The silence of these entities for three years along with the very existence of the Board Resolution as detailed (supra) made the learned WTM to disbelieve the case of these appellants that they made efforts to bring back the amount. In our view, the very stand of the appellant Mr. Srinivasa Reddy that he was credulous enough to sign blank documents; further he-the Managing Director of Farmax being instrumental in obtaining a Board Resolution as detailed (supra), the defense taken by him and Farmax is merely an eyewash. Millions of US$ were involved in the transaction. Their silence for a period of three years would clearly show the involvement of these appellants in the entire episode. The appeals filed by these appellants therefore fail.

11. The Learned AO while imposing the penalty has taken into consideration the extent of the amount which was adjusted by EURAM Bank from the account of appellant Farmax to the extent Vintage had defaulted in making the payment. The AO vide order dated order dated October 29, 2020 had imposed a

penalty of Rs. 12 crore on appellant Farmax. It should however be noted that appellant Farmax on its own has not indulged into fraudulent activity but the activities is imputed to it as the Board of Directors and the Managing Director had indulged into the same. Since the penalty would be in fact on the shareholders of the company in our view, imposition of penalty of Rs. 12 crore would be excessive. In the circumstances, the Appeal No. 527 of 2021 challenging the order of the AO needs to be partly allowed and the penalty needs to be reduced from Rs. 12 crore to Rs. 5 crore.

Sanjay Aggarwal
And
Nithish Bangera

12. It was alleged in the show cause notice that appellant Sanjay Aggarwal and appellant Nithish Bangera were responsible for creating the entire infrastructure for Farmax and Arun Panchariya to bring out the fraudulent GDR issue. They had provided formats for Board Resolution filing with the stock exchanges. They also helped in transferring the funds from account of Farmax with appellant EURAM Bank to Farmax subsidiary in UAE and from that subsidiary to other accounts, etc. Thus, according to the show cause notice they acted as single point of contact in India between these entities. Draft of the disclosure to be made to the stock exchanges, seeking copies

of Memorandum of Association etc. of appellant Farmax, obtaining photos of directors etc. were the activities those were carried by these appellants. The appellant Nithish Bangera was also a recipient of the emails in connection with the above activities.

The appellant Sanjay Aggarwal had submitted that the draft Resolution provided by him did not contain the term of pledging of the bank account where GDR proceeds were to be kept. He however, did not place the copy of the email sent by him to the appellant Farmax in this regard. The appellant Sanjay Aggarwal had sent email seeking blank TT slips with signatures of the concerned and directed that the same be forwarded to noticee no. 6 Mr. Mukesh Chauradiya, the entity connected with noticee Arun Panchariya. The learned WTM observed that an advisor to a company would not seek blank transfer slips from the issuer company and this fact alone would have raised reasonable apprehension of wrongdoing in the mind of appellant Sanjay Aggarwal, if he was not involved in any fraudulent scheme. It was further observed that as a reasonable person and most definitely as 'advisor' to the issue this should have been a red flag for appellant Sanjay Aggarwal. In all these circumstances the learned WTM concluded that appellant Sanjay Aggarwal who is a chartered accountant by profession

and was working as advisor was definitely involved in the entire scheme relating to the GDR issue.

13. Appellant Sanjay Aggarwal submitted as under :-

He was a chartered accountant and had a record of working as employee of reputed firms like Price Waterhouse Cooper, Ernst & Young, Dubai International Financial Exchange, Jefferies, and other reputed corporations. The findings in the impugned order are not supported by any evidence or material on record. These are merely conjecture and surmises. The role of this appellant was merely limited to assisting and coordinating with counsels, depository bank, listing agents and opening of ESCROW accounts etc. He was not aware of any loan agreement, pledge agreement entered into by appellant Farmax on its own terms. There is nothing on record to show that he at any time consulted noticee Arun Panchariya who devised and structured the fraudulent scheme. He was merely carrying a single point coordination between the related entities like merchant bankers and the appellant Farmax. It was submitted that the impugned order (paragraph 52) itself substantiate that the email exchanged between the appellant and Farmax mainly deals with certain documents.

14. Upon hearing both the sides however the very fact that the appellant provided a draft of disclosure to be made by the Farmax to the exchanges that the issue of the GDR was successfully subscribed; that he has forwarded the draft Resolution to be passed by the appellant Farmax which culminated in authorizing the pledge of GDR proceeds; seeking of signatures on blank documents from appellant Farmax would clearly shows that the appellant did not act simply as a bonafide coordinator between the company and the Lead Manager etc. The appeal of the appellant Sanjay Aggarwal, therefore fails.

15. As regards the appellant Nithish Bangera, he was sole employee of La Richesse owned by appellant Sanjay Aggarwal. The learned WTM noted that the email exchanged between appellant Farmax and this appellant are in the nature of raising an invoice regarding write up on the directors, forwarding the invoice from lead manage, seeking copies of certain documents related to the directors and seeking copies of memorandum of association, article of association etc. According to the appellant he ceased to be an employee of La Richesse w.e.f March 03, 2010. He had submitted a letter to that effect issued by La Richesse. The WTM however noted that even after this purported resignation from La Richesse, he had sent an email

dated June 28, 2010 to Farmax seeking copies of it's Memorundum of Association etc. and further appellant Sanjay Aggarwal sent an email on this date that this appellant Nithish Bangera would be travelling to Hyderabad to collect certain documents from the Officials of Farmax. The WTM, therefore, observed that had the appellant Nithish Bangera ceased to be employee of La Richesse it would not have been possible for him to travel to Hyderabad to collect documents on behalf of La Richesse. Therefore, the WTM concluded that this appellant Nithish Bangera continued to work for La Richesse. The WTM further observed that the very fact that this appellant was also recipient of earlier emails wherein appellant Sanjay Aggarwal had directed Farmax to forward blank signed transfer slips to noticee no. 6 Mr. Mukesh Chauradiya who was connected to noticee Arun Panchariya, is a proof of involvement of this appellant in the fraudulent scheme.

16. As regard the email dated June 28, 2010, after he ceased to be the employee of appellant Sanjay Aggarwal, he submitted that in fact his email was hacked on June 28, 2010 and therefore merely on the strength of said email it cannot be concluded that the appellant continued to be in service with appellant Sanjay Aggarwal as on June 28, 2010. The learned WTM however

observed that the appellant had not produced any evidence to support this claim of hacking.

The appellant also raised a plea of a mistaken identity but did not dispute that he was an employee of Sanjay Aggrawal. Therefore this claim was rejected by the learned WTM. The manner of seeking detailed documents from SEBI this appellant was also considered a material to hold him guilty.

17. The learned WTM in all these circumstances concluded that it gives rise to a reasonable inference that this appellant Nithish Bangera played a role in the fraudulent scheme perpetrated by Farmax and other entities.

18. The learned counsel for the appellant submitted that respondent SEBI did not provide inspection of original email which is in the eye of the storm. It also did not show original email from computer system. CPC of the email was not provided to him. His request to cross-examine appellant Shrinivasa Reddy, was not accepted by respondent SEBI, though this Tribunal vide order dated December 03, 2019 in Appeal No. 485 of 2019 had directed for the same. In the said order this Tribunal had however noted the submissions of the

learned counsel for the respondent SEBI that all the grievances of the appellant can be made before the WTM.

19. It was submitted by the learned counsel for the respondent SEBI that the appellant himself has cancelled the cross-examination of appellant Mr. Srinivasa Reddy, Managing Director of Farmax. This statement according to the appellant is a false statement. It was further pointed out that the appellant Sanjay Aggarwal had accepted the fact that the present appellant has resigned from his job w.e.f. March 31, 2010 and the GDR issue was open in August 2010.

Upon hearing both sides, in our view the impugned order of the WTM passed against the appellant in this regard cannot be sustained for the following reasons.

20. The WTM drawn the inference of involvement of the present appellant in the fraudulent scheme issue of GDR on the ground that the copies of email sent by appellant Sanjay Aggarwal were also forwarded to this appellant which included seeking signature on certain blank documents etc. Other work of the appellant like raising invoice, correspondence for write up on directors etc. was the insignificant and routine activity. The appellant was merely an employee of appellant Sanjay

Aggarwal and the observation made by the learned WTM as regard the appellant Sanjay Aggarwal that he was an "advisor" and responsible chartered accountant would not be applicable in this case. One email forwarded to him seeking blank TT slips from the Farmax would not lead to believe that this appellant was aware of the entire fraudulent scheme of GDR issue. The evidence in this regard is lacking. The appeal therefore deserves to be allowed as regard the present appellant.

Prospect Capital Ltd. and John Behar

21. While the appellant Prospect Capital Ltd. has acted as a Lead Manager to the GDR issue, the appellant no. 2 Mr. John Behar, was the Chief Executive of the appellant Prospect Capital Ltd. According to SEBI both these appellants were aware that GDR issue was subscribed by only one entity i.e. Vintage and that deliberately an incorrect list of investors was provided by them to Farmax vide letter dated June 28, 2010 as a part of the fraudulent scheme. The appellant Prospect Capital Ltd. has made submissions that in fact the copy of this letter was not provided by SEBI to it. SEBI however replied that the copy of the said letter was never asked for by appellant Prospect Capital Ltd. or John Behar. It is the case of these appellants that in normal course of business as a Lead Manager the appellants

had merely provided the services. The imputation of knowledge regarding the fraudulent activity either of noticee Arun Panchariya, Farmax or others merely on the basis of the so called letter, copy of which was never provided/ supplied to the appellant would be wrong. Additionally, it was submitted that SEBI has no jurisdiction qua both the appellants as they are based in United Kingdom ("UK") and beyond the jurisdiction of SEBI.

22. As regard the first issue i.e. as to whether the appellants had played part in the fraudulent scheme of issuing GDR with an ulterior motive it is to be seen that Prospect Capital Ltd. was the Lead Manager to the GDR issue. Beside this, it is an admitted fact that appellant John Behar had connection with another noticee Arun Panchariya, who had structured the scheme. During the period August 30, 2006 to September 29, 2011 the appellant John Behar was a Director of Pan Asia Advisors Ltd. He was also Director of Pan Asia Advisors Ltd. from April 28, 2006 to April 01, 2008. Both these entities are of noticee Arun Panchariya.

23. The role of the Lead Manager has been summarized by the Supreme Court of India in the case of ***SEBI vs Pan Asia***

Advisors Ltd. and Anr. (2015) 14 SCC 71. The said case had also arisen out of the similar GDR issue made in a fraudulent manner. In paragraph no. 99 and 100 it was pointed as under:-

> *"**99**. For the purpose of ascertaining the role played by the respondents as Lead Managers, it will be worthwhile to refer to the statement contained in the counter-affidavit filed on behalf of the first respondent, wherein in para E(ii) the functions of the first respondent in relation to any GDR has been mentioned as under:*
>
> *"The functions of the first respondent in relation to any GDRs include:*
>
> *(a) conducting due diligence in collecting and evaluating all possible information which may have a bearing on the issue for the purpose of the listing of GDR issue aboard 'outside of territory and jurisdiction of India';*
>
> *(b) assessing the market for the purpose of the issue and marketing the issue;*
>
> *(c) obtaining confirmation of acceptance of subscription acceptance from the initial investors to the GDR issues;*
>
> *(e) receipt of confirmation of subscription monies received in the requisite company's escrow account opened/ maintained by the company with the escrow account holding bank;*
>
> *(f) receipt of depository's (depository's banks) confirmation of issue of instructions to the clearing systems of the GDR subscribers and confirmation from the requisite foreign stock exchange of the listing of GDRs issue;*
>
> *(g) ensuring that the issuer company complies with applicable non-Indian legal formalities in respect of the same."*
>
> ***"100.** It is true that if in the discharge of its functions as Lead Managers, the respondents had confined to their activities to any of the procedures set out in the said paragraph, it will be for the respondents to demonstrate*

> *before the appellant and come out unscathed. However, if under the guise of performing those functions as Lead Managers, if as pointed out by the appellant, the respondents had indulged in any activities which were contrary to the provisions of the SEBI Act, 1992 read along with the SCR Act, 1956, which provided scope for proceeding against them for having acted against the interests of the Indian Investors in securities and the security market or were involved in collusion with any alleged act of the issuing company in violation of the statutory prescriptions of the SEBI Act, 1992, the SCR Act, 1956, the 2000 Regulations read along with the 1993 Scheme, it is the bounden duty of the respondents to demonstrate before the appellant and now before the Tribunal that no such involvement by the respondents is made out in order to proceed against them as has been decided and orders passed by the appellant in its order dated 20.06.2013."*

24. It could thus be seen that Lead Manager is not merely a post office between the company issuing GDR and the investors investing in the same. The Lead Manager has to conduct due diligence in collecting and evaluating all information. It has to obtain confirmation of acceptance of subscription from the initial investors to the GDR issue etc. The Lead Manager has to show that it has carried its activity as per the procedure as set out in paragraph no. 99 as quoted above.

25. On the other hand, even if we ignore the alleged fact of issuing a false letter as alleged by SEBI, the very fact that the

appellants failed to show that they had confined their activity only to the procedure correctly, would lead us to believe that they were involved in the clandestine scheme. Further the fact that appellant no. 2 John Behar is closely connected to another noticee Arun Panchariya is an added factor in this direction. It was further submitted by SEBI that ESCROW agreement dated May 05, 2010 entered into between Farmax, EURAM Bank and Prospect Capital Ltd. noted that Prospect Capital Ltd. had agreed with Farmax "to procure investors for the subscription of GDRs". However instead of procuring investors these appellants procured sole investor i.e Vintage which is an entity of Arun Panchariya connected both the appellants. Therefore our view, on facts, the order of SEBI as regards these appellants cannot be faulted with.

26. As regard the issue of jurisdiction of SEBI concerning the appellants, we find the answer in the very same judgement of Supreme Court of India in the case of SEBI vs. Pan Asia Advisors Ltd. (Supra). Pan Asia Advisors Ltd. also had challenged the jurisdiction of SEBI on the ground that it was an entity based in United Kingdom (UK). The majority members of Securities Appellate Tribunal had accepted the said challenge and, therefore, SEBI had challenged the said decision before the

Supreme Court. Therefore, the Supreme Court was required to mainly deal with the issue of jurisdiction of SEBI in such matters.

In paragraph no. 30.5 the Supreme Court has noted the challenge of Pan Asia Advisors Ltd. and Arun Panchariya that they are the authorities which were subject to the control of Financial Conduct Authority (UK) and SEBI has no jurisdiction over them. The Supreme Court considered the rival submissions and various statutory provisions relating to the issue of GDR. In paragraph no. 80 following observations were made:-

> ***"80.*** *Having thus noted the statutory prescription relating to the issuance of GDR based on the underlying shares of the issuing company, the manner in which such GDRs were being traded in the global market with the support and assistance of Lead Manager, the scope of construing GDRs as "securities" falling under the definition of "securities" as defined under Section 2(h) of the SCR Act, 1956 required to be noted. The extent of duties and powers vested with SEBI, namely, the protection of the interest of investors in securities and securities market and also the prohibitive measures as well as penal action that can be taken by SEBI whenever it comes across any fraud committed by any person relating to the interest of the investors in securities and securities market are very wide."*

27. The issue was further dealt with vide paragraph no. 83 as under:-

> ***"83.*** *On the other hand according to the respondents, since cradle to grave GDRs are dealt with outside country in the global market, SEBI lacks jurisdiction in proceeding against the respondents. When we consider the above respective submissions, we are convinced that the stand of the appellant that having regard to the statutory prescription under the SEBI Act, 1992, the SCR Act, 1956, the 2000 Regulations, the 1993 Scheme as well as the 2003 Regulations is well justified. Having regard to the nature of the allegations against the respondents, it possesses every jurisdiction to proceed against the respondents……..*

28. Further in paragraph no. 107 of the Pan Asia Advisors Ltd. the Supreme Court quoted its decision in the case of ***Republic of Italy vs. Union of India (2013) 4 SCC 721*** and finally declared as under:-

> *"**107**. ....We fully concur with the said view expressed by the learned Judge and applying the said principle, even if the law applies to persons who are not corporeally present within the territory of India, even if they are citizens abroad when such persons commit acts which affects the legitimate interest of this country which would include such legitimate interest in the case on hand of the investors in India at the stock market, it must be held that the appellant would be fully empowered to proceed against such persons as provided under the provisions of the SEBI Act, 1992."*

29. In view of the above facts, the appeal of Prospect Capital Ltd. as well as John Behar (Appeal No. 632 of 2021) fails.

European American Investment Bank AG

30. The learned WTM had issued warning to the appellant vide the impugned order to ensure that all its future dealings in the Indian Securities Market be done strictly in accordance with law.

The WTM recorded the following facts to come to the conclusion that the present appellant has also violated the relevant provisions of PFUTP Regulations, 2003.

Though loan to subscribe to the GDR was granted to Vintage, the present appellant did not ask for any collateral security from Vintage. However, before any GDR proceeds could be received by Farmax, vide the pledge agreement the future GDR proceeds of Farmax were accepted by this appellant EURAM Bank as a security for the loan made to Vintage. The learned WTM observed that the structure of the transaction thus speak for volume in itself. It was also found that the present appellant EURAM Bank was found involved in the various other GDR issues of the Indian Companies investigated by SEBI. Further, the connection of the appellant EURAM Bank with noticee Arun Panchariya was also noted. It was found that they had a joint venture in the year 2009 i.e. EURAM Bank Asia Limited. Thus, the learned WTM inferred that these two entities knew

each other well enough to trust each other to pursue common business interests. Further, when Farmax had made some enquiry with the EURAM Bank vide email dated November 25, 2010 this appellant – it's banker, instead of answering the said query had replied vide an email, that Farmax should contact noticee Arun Panchariya for any bank related query. The learned WTM noticed that this appellant has not provided any explanation for this email. In all these facts the WTM concluded that the present appellant EURAM Bank was well aware and also part of the fraudulent scheme. As appellant EURAM Bank was registered as Foreign Investment Institute (FII) with SEBI during November 28, 2008 to November 20, 2011 it had only client i.e., noticee no. 10 India Focus Cardinal Fund. In the circumstance, the above warning came to be issued.

31. The learned counsel for the appellant submitted that in fact the present appellant was earlier proceeded against by the respondent SEBI in relation to the GDR issued by six Indian companies. The then learned WTM had passed order in the said proceeding. The appellant came to be discharged by the WTM vide order dated September 05, 2017 and even the appellant's exercise of providing full information was commended by the then learned WTM. It was therefore vehemently submitted that

the principle of issue estoppel would arise in the present case. Therefore, relying on the various judgements regarding the res-judicata and the principle of issue estoppel, the appellant wanted that the appeal be allowed.

32. On merit of the case, it was submitted that the appellant as well as noticee Arun Panchariya had been thoroughly investigated by Austrian authorities and it was found that the act of the present appellant providing finances for subscription of various GDRs issued by various companies in India is according to law. Not only this, the issue of having the joint venture between the appellant and Arun Panchariya in Dubai has been examined by the Dubai Financial Services Authority (DFSA) which concluded that there was no tactical understanding or relationship between this appellant and Arun Panchariya. The appellant was thus given a clean cheat by this authority also. The appellant had nothing to do with fraudulent activity, if any, in subscription of GDR or in issue of the same. There is nothing uncommon in seeking a collateral security from a third party instead of the borrower. Hence it wanted the order be set aside. Further defense of lack of jurisdiction of SEBI was taken.

33. On the issue of jurisdiction of SEBI over this Austrian entity, the learned counsel for the respondent SEBI however submitted that since the appellant was registered as FII in India, the impugned order i.e. the warning is also issued regarding the activities in India and, therefore, SEBI has every jurisdiction to pass such order.

34. Before dealing with the arguments the alleged fraudulent activity of the appellant and the question as to whether principle of issue estoppel would arise it would be fruitful to first deal with the issue of jurisdiction. As already observed in the case of appellant Prospect Capital Ltd. (Supra) we find that the Supreme Court of India in the case of **SEBI vs Pan Asia** (Supra) had already finally concluded that respondent SEBI has jurisdiction to deal with the foreign entities in case their activities causes an effect in the Indian securities market. Therefore respondent SEBI has every jurisdiction to pass the impugned order.

35. As regard the principle of issue estoppel, we have gone through the order passed by another WTM dated September 05, 2017 in the case of issue of GDRs by six other companies. We find that, in that case the investigation was not directed to probe

the role of the present appellant of providing finances for GDR subscription by accepting pledge of the GDR proceedings from the respective companies. The show cause notice and the interim direction dated September 21, 2011 in that case was dealing with "EURAM American Investment Bank AG registered as a Foreign Institutional Investor (EURAM-FII)". The role of EURAM-FII was highlighted as foreign investment institute which had another entity (which is also another noticee in the present case) being it's sole sub-account holder. In that proceeding EURAM-FII had replied to the show cause notice and defended that it cannot be held liable for any breach by India Focus Cardinal Fund of the PFUTP Regulations. The allegations therein against the FII were that it has violated regulation 13(A)(1) of the FII regulations read with certain clauses of Code of Conduct specified under the said regulations. The learned WTM in that order noted that no specific adverse inference was drawn against the EURAM-FII in the show cause notice itself. Therefore, EURAM-FII was exonerated in the said case. While exonerating the said entity the learned WTM had made a remark that said EURAM-FII as well as the present appellant EURAM Bank (not a party in that proceeding) have fully cooperated with the investigation conducted by SEBI.

36. This comment by the learned WTM commending the present appellant is taken as an issue estoppel by the appellant in the present case. The entire reading of the order of the learned WTM in that case would show that the EURAM-FII's role as a foreign investment institute was investigated and examined by respondent SEBI. Its role as a banker providing finances to subscribers to the GDR and accepting collateral of the GDR proceeds from the respective companies was not examined. The principle of issue estoppel therefore would not at all be applicable in the present case.

As regard the fact of the case, it is an admitted fact the appellant had advanced loan to Vintage for subscribing to the GDR of the Farmax as a sole subscriber. The Vintage is owned by noticee Arun Panchariya. Present appellant had joint venture with Arun Panchariya as detailed supra. The appellant did not explain as to why no collateral security could be obtained from Vintage or Arun Panchariya. However, the GDR proceeds to be received in future were accepted as a pledge by EURAM Bank. Thus, it was nothing but a case of making two entries in two accounts i.e. one in the account of Vintage of granting loan and another in the account of Farmax of receiving the GDR proceeds and holding the same as a security for the loan advance to Vintage. In the process, appellant EURAM had

earned interest and the loan remained fully secured by the GDR proceeds. It would be naive to believe that EURAM Bank did not know the purpose for which the GDRs are issued and whether the pledging of the GDR proceeds for a stranger could be an object or purpose of issuing GDR.

37. The learned counsel for the appellant relying on the case of ***Dilip S. Pendse vs SEBI Appeal No. 80 of 2009 decided on November 19, 2009*** submited that the preponderance of probability to prove the charge of fraud is higher than the regular one. Considering the status of the appellant as an International Bank; that it was registered as a foreign investment institute in India, having connection with the noticee Arun Panchariya, in our view the above test is satisfied in the present case.

38. In the result, the present appeal also fails.

39. Hence the following order:

ORDER

Appeal No. 214 of 2020 filed by Nithish Bangera is hereby allowed without any order as to costs. The order of learned WTM as regard Nithish Bangera is hereby set aside. Misc. Application is accordingly disposed of.

Appeal No 527 of 2021 is hereby partly allowed without any order as to costs. The penalty imposed by the AO of Rs. 12 crore is hereby reduced to Rs. 5 crore.

Appeal Nos. 33 of 2022, 34 of 2022, 286 of 2020, 632 of 2021, 351 of 2020 and 528 of 2021 are dismissed without any orders as to costs.

40. This order will be digitally signed by the Private Secretary on behalf of the bench and all concerned parties are directed to act on the digitally signed copy of this order. Certified copy of this order is also available from the Registry on payment of usual charges.

Justice Tarun Agarwala
Presiding Officer

Justice M. T. Joshi
Judicial Member

21.03.2022
PK